

ESTTA Tracking number: **ESTTA639437**Filing date: **11/17/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	1393104 Ontario Limited d/b/a The Orange aPEEL Company		
Entity	Corporation	Citizenship	Canada
Address	2180 Hwy 54 West Caledonia, ON N3W 1Y4 CANADA		

Attorney information	Ellen S. Simpson Simpson & Simpson PLLC 5555 Main Street Williamsville, NY 14221 UNITED STATES esimpson@idealawyers.com Phone:716-626-1564
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**Registrations Subject to Cancellation**

Registration No	4388955	Registration date	08/20/2013
Registrant	Orange A Peel Product Pty Ltd 10 Mahogany St, Capalaba Brisbane, 4157 AUSTRALIA		

**Goods/Services Subject to Cancellation**

Class 003. First Use: 2012/08/10 First Use In Commerce: 2012/08/10 All goods and services in the class are cancelled, namely: Multi-purpose cleaning and degreasing preparations; laundry stain removing preparations; bathroom cleaning preparations; toilet cleaning preparations; oven andBBQ cleaning preparations; rinse agentsfor dishwashing machines; window cleaning preparations; boat cleaning preparations; dishwashing detergent; laundry detergent; hand washing soaps; floor cleaning preparations; upholstery cleaning preparations; jewelry cleaning preparations;engine degreasing preparations and exhaust range hood degreasing preparations
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4329281	Registration date	04/30/2013
Registrant	Orange A Peel Product Pty Ltd 10 Mahogany St, Capalaba Brisbane, 4157 AUSTRALIA		

**Goods/Services Subject to Cancellation**


Class 003. First Use: 2012/08/10 First Use In Commerce: 2012/08/10 All goods and services in the class are cancelled, namely: Multi-purpose cleaning and degreasing
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## Grounds for Cancellation

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Priority and likelihood of confusion	Trademark Act section 2(d)

## Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86278632	Application Date	05/12/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ORANGE APEEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/02/01 First Use In Commerce: 2005/02/15 (Based on Use in Commerce) All-purpose cleaners(Based on 44(e)) All-purpose cleaners		

Attachments	86278632#TMSN.png( bytes ) ORAC101US_Pet for Cancellation.pdf(1571603 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ellen S. Simpson/
Name	Ellen S. Simpson
Date	11/17/2014

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the Matter of U.S. Trademark Registration Nos. 4,388,955 and 4,329,281*

1393104 Ontario Limited d/b/a )  
The Orange aPEEL Company )  
 )  
Petitioner, )  
 )  
v. )  
 )  
Orange A Peel Product Pty Ltd. )  
 )  
Registrant. )  
\_\_\_\_\_ )


Cancellation No. \_\_\_\_\_

Commissioner for Trademarks  
ATTN: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**COMBINED PETITION FOR CANCELLATION**

Honorable Sirs:

1393104 Ontario Limited d/b/a The Orange aPEEL Company ("Petitioner"), formed in Ontario, Canada, having a principal place of business at 2180 Hwy 54 West, Caledonia, Ontario CANADA N3W 1Y4, believes that it is being and will continue to be damaged by continued

registration of the trademarks ORANGE A PEEL and  shown in the above-identified registrations of Orange A Peel Product Pty Ltd ("Registrant"), a proprietary limited company, located at 10 Mahogany Street, Capalaba, Brisbane AUSTRALIA 4157, and hereby petitions to cancel the registrations.


As grounds for the petition, Petitioner states as follows:

1. Petitioner, 1393104 Ontario Limited d/b/a The Orange aPEEL Company, was formed in Ontario, Canada with a principal place of business in Caledonia, Ontario, Canada.

2. Petitioner has adopted, and is the owner of the trademark ORANGE APEEL ("Petitioner's Mark").

3. On May 12, 2014, Petitioner filed U.S. Trademark Application Serial No. 86/278,632 with the United States Patent and Trademark Office (USPTO) seeking to register Petitioner's Mark for use in association with all-purpose cleaners in International Class 3.

4. On August 26, 2014, an Office Action was issued refusing registration of Petitioner's Mark on the ground that the Examining Attorney believed that there was a likelihood of confusion under Section 2(d) of the Trademark Act between Petitioner's Mark and the mark ORANGE A PEEL that is the subject of U.S. Trademark Registration No. 4,329,281 and the

mark  that is the subject of U.S. Trademark Registration No. 4,388,955, both owned by Registrant.

5. Since at least as early as August, 1998, long prior to the filing date of the applications for the registrations sought to be cancelled herein, Petitioner has been using, and continues to use, the trademark ORANGE APEEL in interstate commerce in connection with all-purpose cleaners. The trademark ORANGE APEEL has become identified with Petitioner and its goods and is well known in connection with Petitioner's goods.

6. Petitioner has been using, and continues to use, the mark ORANGE APEEL from a date prior to March 6, 2012, the date of filing of Applicant's intent-to-use application for registration of the mark ORANGE A PEEL, and from a date prior to March 6, 2012, the date of filing of Applicant's intent-to-use application for registration of the mark



, and a date prior to any date of first use that can be relied upon



by Registrant for the marks ORANGE A PEEL and/or

7. Since at least as early as August, 1998, Petitioner has expended a substantial amount of time, money and effort promoting, marketing and advertising its goods under and in connection with the ORANGE APEEL mark. As a result of Petitioner's continuous use of its mark, Petitioner has developed and enjoys extensive goodwill and customer recognition throughout the United States with respect to its mark.

8. Registrant filed its applications to register the marks ORANGE A PEEL and



on March 6, 2012, well after Petitioner's date of first use of its mark in interstate commerce.




9. Registrant's marks, ORANGE A PEEL and are confusingly similar in sight, sound and meaning to Petitioner's ORANGE APEEL mark owned and used by Petitioner. The use and registration of Registrant's marks ORANGE A PEEL and





has and will continue to result in confusion, mistake and/or deception as to the source or origin of Registrant's goods, leading consumers to believe that they are somehow affiliated with, approved, sponsored or licensed by Petitioner.






10. If Registrant is permitted to maintain its registrations for the marks ORANGE A

PEEL and  for use in association with the goods identified in its registrations, confusion in trade, resulting in irreparable damage and injury to Petitioner, inevitably would result by reason of the similarity between Petitioner's and Registrant's marks and the goods provided thereunder. Any objection or fault found with the goods marketed under

 Registrant's marks, ORANGE A PEEL and  would reflect on, and injure, the reputation Petitioner has established for the goods provided under its aforesaid mark. If Registrant is allowed to maintain its registrations herein sought to be cancelled, Registrant would maintain a *prima facie* exclusive right to use its marks as set forth in its registrations. Such registrations have become a source of damage and injury to Petitioner through the generation of confusion, mistake, and/or deception, and the diminution of Petitioner's ability to control the quality of goods provided thereunder.

11. In view of the similarity in sight, sound and meaning between Petitioner's mark ORANGE APEEL and Registrant's marks ORANGE A PEEL and

 ; the similarity between the respective goods of Petitioner and Registrant associated with Petitioner's ORANGE A PEEL mark and Registrant's ORANGE A

 PEEL and  marks; and the similarity of the channels of trade and customer base for Registrant's goods and Petitioner's goods; Registrant's marks ORANGE A



PEEL and so resemble Petitioner's ORANGE APEEL mark as to be likely to cause confusion, and/or to cause mistake, and/or to deceive.

12. At the time of the filing of its applications to register the marks ORANGE A



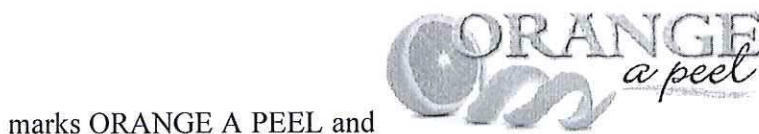
PEEL and , Registrant was well aware of the existence of Petitioner and the fact that Petitioner had used and was continuing to use the mark ORANGE APEEL in association with Petitioner's goods, namely, all-purpose cleaners. Indeed, Registrant placed an order with Petitioner for ORANGE APEEL brand all-purpose cleaner in 2012.

13. At the time of the filing of its applications to register the marks ORANGE A




PEEL and , Registrant, through its counsel, executed the Declarations on each application stating that "(t)he signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive." At the time of the execution of the Declarations, Registrant knew these statements to be false.

14. Petitioner believes that it will be damaged by the continued registration of the




marks ORANGE A PEEL and and will continued to be damaged



by the existence of the marks ORANGE A PEEL and  on the Principal Register because these marks are obstacles to Petitioner's registration of its mark ORANGE APEEL for its identified goods in that the USPTO initially refused registration of Petitioner's mark ORANGE APEEL in association with Petitioner's goods and will likely refuse registration of any other application filed by Petitioner for use of its ORANGE APEEL mark in association with its goods.

15. Petitioner requests that U.S. Trademark Registration No. 4,329,281 for the mark ORANGE A PEEL and U.S. Trademark Registration No. 4,388,955 for the mark



 be cancelled in their entireties on the ground that these marks are confusingly similar to Petitioner's mark ORANGE APEEL, that Petitioner has senior rights in its mark ORANGE APEEL, and that the registrations were obtained through fraud on the U.S. Patent & Trademark Office in that Registrant was well aware of Petitioner's earlier and continued use of its mark in association with all-purpose cleaners at the time Registrant's applications to register its marks were filed with the U.S. Patent & Trademark Office.



WHEREFORE, Petitioner prays that Registration Nos. 4,329,281 and 4,388,955 be cancelled and that this Combined Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby submits the requisite filing fee in the amount of \$600.00 as required in 37 C.F.R. § 2.6(a)(16). Please charge any additional fees to Account No. 50-0822.

Respectfully submitted,




Ellen S. Simpson  
Attorney for Petitioner  
Simpson & Simpson PLLC  
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Williamsville, New York 14221  
(tel) 716-626-1564  
(fax) 716-626-0366

DATED: November 17, 2014  
ESS:

**CERTIFICATION UNDER 37 C.F.R. §1.8**

I hereby certify that this PETITION FOR CANCELLATION is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* on this 17<sup>th</sup> day of November, 2014.




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**CERTIFICATE OF SERVICE**

I certify that a true copy of this PETITION FOR CANCELLATION was served upon the Registrant by depositing a copy thereof with the U.S. Postal Service, via Priority Mail, postage prepaid, directed to Registrant:

Orange A Peel Product Pty Ltd.  
10 Mahogany St., Capalaba  
Brisbane, 4157  
Australia

Dated: November 17, 2014

By:   
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